

# असाधारण EXTRAORDINARY

भाग II—स्वर 2 PART II—Section 2

# प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

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इस भाग में भिन्स पृष्ठ संख्या की कानी ही जिससे कि यह अलग संकलम की रूप में एका का सके ।

Separate paging is given to this Part in order that it may be filed as a separate compilation

# LOK SABHA

The following Bills were introduced in Lok Sabha on the 29th August, 1985:—

#### BILL No. 165 of 1985

A Bill to make, in the public interest, special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventire, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

#### CHAPTER I

#### PRELIMINARY

- 1. (1) This Act may be called the sick Industrial Companies (Special Provisions) Act, 1985.
  - (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the commencement of that provisions.

(12) (3) (3)

Short title, extent, commencement and application,

- (4) It shall apply, in the first instance, to all the scheduled industries other than the scheduled industry relating to ships and other vessels drawn by power.
- (5) The Central Government may, in consultation with the Reserve Bank of India, by notification, apply the provisions of this Act, on and from such date as may be specified in the notification, to the scheduled industry relating to ships and other vessels drawn by power.

Declaration.

2. It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39 of the Constitution.

Definitions.

- 3. (1) In this Act, unless the context otherwise requires,—
- (a) "Appellate Authority" means the Appellate Authority for Industrial and Financial Reconstruction constituted under section 5;
- (b) "Board" means the Board for Industrial and Financial Reconstruction established under section 4;
- (c) "Chairman" means the Chairman of the Board or, as the case may be, the Appellate Authority;
- (d) "company" means a company as defined in section 3 of the Companies Act, 1956, but does not include a Government com- 1 of 19 pany as defined in section 617 of that Act;

- (e) "industrial company" means a company which owns one or more industrial undertakings;
- (f) "industrial undertakings" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any company but does not include-
  - (i) an ancillary industrial undertaking as defined in clause (aa) of section 3 of the Industries (Development and Regulation) Act, 1951; and

65 of 1951.

- (ii) a small scale industrial undertaking as defined in c'ause (j) of the aforesaid section 3;
- (g) "Member" means a Member of the Board or, as the case may be, the Appellate Authority and includes the Chairman thereof;
- (h) "notification" means a notification published in the Official Gazette;
- (i) "operating agency" means any public financial institution as may be specified by general or special order as its agency by the Board;
- (j) "prescribed" means prescribed by rules made under this Act:
- (k) "public financial institutions" means any of the following institutions, namely:
  - (i) the Industrial Credit and Investment Corporation India Limited, a company formed and registered under the Companies Act, 1913;

7 of 1913,

15 of 1948.

18 of 1964.

62 of 1984.

- (ii) the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948:
- (iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964;
- (iv) the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India Act, 1984;
- (v) such other institutions as the Central Government may, by notification, specify:

Provided that no institution shall be so specified unless it has been established or constituted by or under any Central Act, or not less than fifty-one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government or by any one or more of the institutions mentioned in sub-clauses (i) to (iv) or partly by the Central Government and partly by one or more of the institutions mentioned in sub-clauses (i) to (iv);

- (l) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;
  - (m) "scheduled bank" means a bank for the time being included in the Second Scheduled to the Reserve Bank of India Act, 1934:
  - (n) "scheduled industry" means any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951;
  - (o) "sick industrial company" means an industrial company (being a company registered for not less than seven years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth and has also suffered cash losses in such financial year and the financial year immediately preceding such financial year.

Explanation.—For the purposes of this clause—

- (i) "cash loss" means loss as computed without providing for depreciation;
- (ii) "net worth" is the sum total of the paid-up capital and free reserves;
- (iii) "free reserves" means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation;
- (p) "State level institution" means any of the following institutions, namely:—
  - (i) State Financial Corporations established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations Act, 1951;

2 of 1934,

2 of 1934,

65 of 1951.

63 of 1951.

- (ii) State industrial development corporations registered under the Companies Act, 1956;
- (iii) such other institutions, being companies and not being public financial institutions, engaged in the development or financing of industrial undertakings, as the Central Government may, by notification, specify:

Provided that no institution shall be so specified unless not less than fifty-one per cent. of the paid-up share capital thereof is held by any State Government or Governments or by any institution or institutions mentioned in sub-clauses (i) and (ii) or partly by one or more public financial institutions or institutions mentioned in sub-clauses (i) and (ii) and partly by one or more State Governments.

(2) (a) Words and expressions used and not defined in this Act shall have the meanings, if any, respectively assigned to them in the Companies Act, 1956.

1 of 1956.

(b) Words and expressions used but not defined either in this Act or in the Companies Act, 1956 shall have the meanings, if any, respectively assigned to them in the Industries (Development and Regulation) Act, 1951.

1 of 1956.

65 of 1951.

(3) Any reference in this Act to any other enactment or any provision thereof, shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any in force in that area.

# CHAPTER II

BOARD AND APPELLATE AUTHORITY FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

Establishment of Board,

- 4. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established a Board to be known as the "Board for Industrial and Financial Reconstruction" to exercise the jurisdiction and powers and discharge the functions and duties conferred or imposed on the Board by or under this Act.
- (2) The Board shall consist of a Chairman ind not less than two and not more than fourteen other Members, to be appointed by the Cenertal Government.
- (3) The Chairman and other Members of the Board shall be persons who are or have been or are qualified to be High Court Judges, or persons of ability, integrity and standing who have special knowledge of, and professional experience of not less than twenty years in science, technology, economics, banking industry, law, labour matters, industrial finance, industrial management, industrial reconstruction, administration, investment, accountancy, marketing or any other matter, the special knowledge of, or professional experience in which, would in the opinion of the Central Government be useful to the Board.

5. (1) The Central Government may by notification, constitute, with effect Costitufrom such date as may be specified therein, an appellate authority to be called the "Appellate Authority for industrial and Financial Reconstruction" consisting of a Chairman and not more than three other Members, to be appointed by thit Government, for hearing appeals against the orders of the Board under this Act.

Authority.

- (2) The Chairman shall be a person who is or has been a Judge of the Supreme Court or who is or has been a Judge of a High Court for not less than five years.
- (3) A member of the Appellate Authority shall be a person who is or has been a Judge of a High Court or who is or has been an officer not below the rank of a Secretary to the Government of India or who is or has been a Member of the Board for not less than three years.
- 6. (1) Before appointing any person as the Chairman or other Member, the Central Government shall satisfy itself that the person does not and will not, have any such financial or other interest as is likely to affect prejudicially his functions as such Member.
- (2) The Chairman and every other Member shall hold office for such period, not exceeding five years, as may be specified by the Central Government in the order of his appointment, but shall be eligible for reappointment:

Lerm of office, conditions of service, etc., of Chairman other Members.

Provided that no person shall hold office as the Chairman or other Member after he has attained the age of sixty-five years.

- (3) Notwithstanding anything contained in sub-section (1), a Member may-
  - (a) by writing under his hand and addressed to the Central Government resign his office at any time;
  - (b) be removed from his office in accordance with the provisions of section 7.
- (4) A vacancy caused by the resignation or removal of the Chairman or any other Member under sub-section (3) or otherwise shall be filled by fresh appointment.
- (5) In the event of the occurrence of a vacancy in the office of the Chairman by reason of his death, resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf shall act as the Chairman till the date on which new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
- (6) When the Chairman is unable to discharge his functions owing to absence, illness or any other cause, such one of the Members as the Chairman may authorise in writing in this behalf, shall discharge the functions of the Chairman, till the date on which the Chairman resumes his duties.
- (7) The salaries and alowances payable to and the other terms and conditions of service of the Chairman and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman or any other Member shall be varied to his disadvantage after his appointment.

- (8) The Chairman and every other Member shall before entering upon his office, make a declaration of fidelity and secrecy in the form set out in the Schedule.
- (9) The Chairman or any other Member ceasing to hold office as such shall not hold any appointment or be connected with the management or administration in any company in relation to which any matter has been the subject matter of consideration before the Board or, as the case may be, the Appellate Authority, for a period of five years from the date on which he ceases to hold such office.

Removal of Members from office in certain circumstances,

- 7. (1) The Central Government may remove from office any Member, who—
  - (a) has been adjudged as insolvent, or
  - (b) has been convicted of an offence which, in the opinion of the Central Government, involves motal turpitude, or
  - (c) has become physically or mentally incapable of acting as a Member, or
  - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or
  - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) Notwithstanding anything contained in sub-setion (1), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference being made to it in this behalf by the Central Government, has, on an inquiry held by it in accordance with such procedure as it may specify in this behalf, reported that the Member ought, on such grounds, to be removed.
- 8. (1) The Central Government shall appoint a Secretary to the Board and a Secretary (by whatever name called) to the Appellate Authority to exercise and perform, under the control of the Chairman, such powers and duties as may be prescribed or as may be specified by the Chairman.
- (2) Subject to such restrictions and conditions as may be prescribed, the Board or, as the case may be, the Appellate Authority, may ippoint such other officers and employees as may be necessary for the efficient performance of its functions.
- (3) The salaries and allowances payable to and the conditions of service of the Secretary and other officers and employees of the Board and the Appellate Authority shall be such as may be prescribed:

Provided that such Secretary, officer or other employee shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Schedule.

Secretary, officers and other employees of Board or Appellate Authority.

9. The salaries and allowances payable to the Members and the administrative expenses, including salaries, allowances and pension, payable to or in respect of the officers and other employees of the Board and the Appellate Authority shall be defrayed out of the Consolidated Fund of India.

Salaries, etc., be defrayed out of the Consolidated Fund of India,

10. No act or proceeding of the Board or, as the case may be, the Appellate Authority shall be questioned on the ground merely of the existence of any vacancy or defect in the constitution of the Board or the Appellate Authority or any defect in the appointment of a person acting as a Member of the Board or the Appellate Authority.

Vacancies, etc., not to invalidate proceedings of Board and Appellate Athority.

11. The Chairman and other Members and the officers and other employees of the Board and the Appellate Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members and staff of Board and Appellate Authority to be public servants.

45 of 1860.

12. (1) The jurisdiction, powers and authority of the Board or the Appellate Authority may be exercised by Benches thereof.

Constitution of Benches of Board or Appellate Authority.

Procedure of

Board and

rity.

Appellate Autho-

- (2) The Benches shall be constituted by the Chairman and cach Bench shall consist of not less than two Members.
- (3) If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ and the case shall be referred by the Chairman of the Board or, as the case may be, the Appellate Authority for hearing on such point or points by one or more other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case including those who first heard it.
- 13. (1) Subject to the provisions of this Act, the Board or, as the case may be, the Appellate Authority, sha'l have powers to regulate—
  - (a) the procedure and conduct of the business;
  - (b) the procedure of the Benches, including the places at which the sittings of the Benches shall be held;
  - (c) the delegation to one or more Members of such powers or functions as the Board or, as the case may be, the Appellate Authority may specify.
- (2) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Board or, as the case may be, the Appellate Authority, shall include the power to determine the extent to which persons interested or claiming to be interested in the subject matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceedings.

(3) The Board or the Appellate Authority shall, for the purposes of any inquiry or for any other purpose under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 5 of 1908. while trying suits in respect of the following matters, namely:-

- (a) the summoning and enforcing the attendance of any witness and examining him on oath;
- (b) the discovery and production of document or other material object producible as evidence;
  - (c) the reception of evidence on affidavit;
- (d) the requisitioning of any public record from any court or office:
- (e) the issuing of any commission for the examination of witnesses:
  - (f) any other matter which may be prescribed.
- 14. The Board or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Board or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

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# indicial proceedings.

# CHAPTER III

# REFERENCES, INQUIRIES AND SCHEMES

Reference to Board

Proceed-

ings before

Board

or Ap-

pellate

Authority to be

> 15. (1) Where an industrial company has become a sick industrial company, the Board of Directors of the company, shall, within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial company make a reference to the Board for determination of the measures which shall be adopted with respect to the company:

> Provided that if the Board of Directors had sufficient reasons even before such finalisation to form the opinion that the company had become a sick industrial company, the Board of Directors shall, within sixty days after it has formed such opinion, make a reference to the Board for the determination of the measures which shall be adopted with respect to the company.

> (2) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Board for determination of the measures which may be adopted with respect to such company:

Provided that a reference shall not be made under this sub-section in respect of any industrial company by—

- (a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;
- (b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to, such company, an interest in such company.
- 16. (1) The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company—

Inquiry
into
working of
sick industrial companies.

- (a) upon receipt of a reference with respect to such company under section 15; or
- (b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.
- (2) The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order.
- (3) The Board or, as the case may be, the operating agency shall complete its inquiry as expeditiously as possible and endeavour shall be made to complete the inquiry within sixty days from the commencement of the inquiry.
- (4) Where the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it shall appoint one or more persons to be a special director or special directors of the company for safeguarding the financial and other interests of the company.
- (5) The appointment of a special director referred to in sub-section (4) shall be valid and effective notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Board.
  - (6) Any special director appointed under sub-section (4) shall-
  - (a) hold office during the pleasure of the Board and may be removed or substituted by any person by order in writing by the Board;
  - (b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

1 of 1956.

'(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.

Powers of Board to make suitable order on the completion of inquiry.

- 17. (1) If after making an inquiry under section 16, the Board is satisfied that a company has become a sick industrial company, the Board shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be by order in writing, whether it is practicable for the company to make its net worth positive within a reasonable time.
- (2) If the Board decides under sub-section (1) that it is practicable for ansick industrial company to make its net worth positive within a reasonable time, the Board, shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth positive.
- (3) If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth positive within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

# (4) The Board may,-

- (a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, review such order on a reference in that behalf from any agency referred to in sub-section (2) of section 15 or on its own mouon and pass a fresh order in respect of such company under sub-section (3);
- (b) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

Preparation and sanction of schemes.

- 18. (1) Where an order is made under sub-section (3) of section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and of finarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely:—
- (a) the reconstruction, revival or rehabilitation of the sick industrial company;
- (b) the proper management of the sick industrial company by change in, or take over of, management of the sick industrial company,
- '(c) the amalgamation of the sick industrial company with any other industrial company (referred to in this section as 'transferee industrial company');

(d) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

- (e) such other preventive, ameliorative and remedial measures as may be appropriate;
- (f) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (e).
- (2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely:
  - (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be of the transferee industrial company;
  - (b) the transfer to the transferee industrial company of the business, properties assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme;
  - (c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the sick industrial company, and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
  - (d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee industrial company for the purpose of altering the capital structure thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
  - (e) the continuation by, or against, the sick industrial company or, as the case may be, the transferee industrial company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under subsection (3) of section 17;
  - (f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Board considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;
  - (g) the allotment to the shareholders of the sick industrial company, of shares in the sick industrial company or, as the case may be, in the transferee industrial company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder the payment of cash to those shareholders in full satisfaction of their claims—
    - (i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

- (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
- (h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;
- (i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified or to fix reserve price for such sale;
- (j) method of sale of the assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;
- (k) transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company;
- (1) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.
- (3) (a) A copy of the scheme prepared by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to the transferee industrial company and any other industrial company concerned in the amalgamation for suggestions and objections, if any, within such period as the Board may specify.
- (b) The Board may make such modifications if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee industrial company and any other industrial company concerned in the amalgamation and from any shareholder or any creditors or employees of such industrial companies:

Provided that where the scheme relates to amalgamation of the sick industrial company the said scheme shall be laid before the transferee industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee industrial company.

(4) 'The scheme shall thereafter be sanctioned as soon as may be, by the Board (hereinafter referred to as the 'sanctioned scheme') and shall come into force on such date as the Board may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(5) The Board may on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications

as it may deem fit or may by order in writing—direct—any—operating agency specified in the order, having regard to such guidelines as may be specified in the order, to prepare a fresh—scheme—providing—for—such measures as the operating agency may consider necessary.

- (6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).
- (7) The sanction accorded by the Board under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction of amalgamation, or any other measure—specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence.
- (8) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industry company, or, as the case may be, on the transferee industrial company and also on the shareholders of both the companies.
- (9) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Board may, on the recommendation of the operating agency, by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.
- (10) The Board may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to such sick industrial company as may be specified in the order.
- (11) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of the Companies Act. 1956

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19. (1) Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances, or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority or creditors or concerned persons to the sick industrial company.

Rehabilita tion by giving financial assistance.

- (2) Every scheme referred to in sub-section (1) shall be circulated to all concerned for their consent within a period of sixty days from the date of such circulation.
- (3) Where the consent referred to in sub-section (?) is given by all concerned, the Board may, as soon as may be sanction the scheme and on and from the date of such sanction the scheme shall be binding on the consenting authorities institutions and persons

(4) Where the consent is not given by any authority or institution or person under sub-section (2), the Board may adopt such other measures, including winding up of the sick industrial company, as it may deem fit.

Winding up of sick industnal company

- 20. (1) Where the Board, after making inquiry under section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of opinion that it is just and equitable that the sick industrial company should be wound up, it may record and forward its opinion to the concerned High Court.
- (2) The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial company and may proceed and cause to proceed with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956.

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(3) For the purpose of winding up of the sick industrial company, the High Court may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of the sick industrial company and the officer so appointed shall for the purposes of the winding up of the sick industrial company be deemed to be, and have all the powers of, the official liquidator under the Companies Act, 1956.

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(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High Court for orders for distribution in accordance with the provisions of section 529A, and other provisions of the Companies Act. 1956.

1 of 1956.

Operating agency to prepare complete inventory, etc.

- 21. Where, in relation to an inquiry or scheme, the circumstances so require, the Board may, through any operating agency, cause to be prepared—
  - (a) with respect to an industrial company, a complete inventory of—
    - (i) all assets and liabilities of whatever nature:
    - (ii) all books of account, registers maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto;
  - (b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and the unsecured creditors:
  - (c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;
  - (d) an estimate of reserve price, lease rent or share exchange ratio; and
  - (e) proforma accounts, where no up-to-date audited accounts, are available.

1 of 1956.

1 of 1956.

22. (1) Where an inquiry under section 16 is initiated or any scheme referred to in section 17 is under consideration of the Board or where a sanctioned scheme is under implementation, notwithstanding anything contained in the Companies Act, 1956 or any other law or the memorandum and articles of association of the sick industrial company or any other instrument having effect under the said Act or other law no proceeding for the winding up of such sick industrial company or for any proceedings for execution, distress, or the like against any of the properties of the sick industrial company or for the appointment of receiver in respect thereof, shall lie or be proceeded with further, except with the consent of the Board.

Suspension of legal proceedings, contracts, etc.

- (2) Where the management of the sick industrial company is taken over or changed, notwithstanding anything contained in the Companies Act, 1956 or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law—
  - (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
  - (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.
- (3) During the period of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and habilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

- (4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,—
  - (a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

1 of 1956.

- (b) on the declaration ceasing to have effect-
- (i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and
- (ii) any proceeding so remaining stayed shall be proceeded with subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.
- (5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

#### CHAPTER 1V

PROCEEDINGS IN CASE OF POTENTIALLY SICK INDUSTRIAL COMPANIES, MISFEASANCE PROCEEDINGS, APPEALS AND MISCELLANEOUS

loss of fifty per cent. net worth by industrial companies,

- 23. (1) If the accumulated losses of an industrial company, as at the end of any financial year (hereinafter referred to as the relevant financial year) have resulted in erosion of fifty per cent. or more of its peak net worth during the immediately preceding five financial years,—
  - (a) the company shall, within a period of sixty days from the date (hereinafter referred to as the relevant date) of finalisation of the duly audited accounts of the company for the relevant financial year—
    - (1) report the fact of such erosion to the Board; and
    - (ii) hold a general meeting of the shareholders of the company for considering such erosion;
  - (b) the Board of directors shall, at least twenty-one days before the date on which the meeting under sub-clause (ii) of clause (a) is held, forward to every member of the company a report as to such erosion and the causes for such erosion;
  - (c) the company may, by ordinary resolution passed at the meeting held under clause (a) remove a director (being a director appointed by the members of the company) and fill the vacancy created by such removal, so far as may be, in accordance with the procedure provided in sub-sections (2) to (6) of section 284 of the Companies Act, 1956.

1 of 1956.

- (2) A director removed under sub-section (1) shall not be entitled to any compensation or damages for termination of his appointment as director or of any appointment terminating with that as director.
- (3) If default is made in complying with the provisions of this section, every director or other officer of the company who is in default shall be punishable with imprisonment which shall not be less than six months but which may extend to two years and with fine.

Misfeasance proceedings. 24. (1) If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Board that any person who has taken part in the promotion, formation or management of the sick industrial com-

pany or its undertaking, including any past or present director, manager or officer or employee of the sick industrial company—

- (a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company; or
- (b) has been guilty of any misfeasance malfeasance or non-feasance or breach of trust in relation to the sick industrial company,

the Board may direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Board thinks just, and also report the matter to the Central Government for any other action which that Government may deem fit.

- (2) No directions shall be given by the Board under this section unless such person has been given an opportunity for making his submissions.
- (3) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.
- 25. (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which a copy of the order is issued to him, prefer an appeal to the Appellate Authority:

Appeal,

Provided that the Appellate Authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (2) On receipt of an appeal under sub-section (1), the 'Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against.
- 26. No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appel'ate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Bar of jurisdiction.

27. The Board may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be specified in the order, to any Member or Secretary or other officer or employee of the Board or other person authorised by the Board to manage any industrial company or industrial undertaking or any operating agency, such powers and duties [except the powers and duties under sub-sections (2) and (4) of section 16, section 17, sub-section (3) and (4) of section 19, subsection (1) and (4) of section 20, sub-section (3) of section 22 and section 24] under this Act as it may deem necessary.

Delegation of powers.

28. (1) The Board shall furnish from time to time to the Central Government such returns as the Central Government may require.

Returns and information,

- (2) The Board may, for the purpose of efficient discharge of its functions under this Act, co'lect from, or furnish to,—
  - (a) the Central Government,
  - (b) the Reserve Bank,
  - (c) the scheduled bank or any other bank,
  - (d) the public financial institution, or
  - (e) the State-level institution.

such information as it may consider useful for the purpose in such manner and within such time as it may think fit.

Power to seek the assistance of Chief Metropolitan Magistrate and District Magistrate

- 29. (1) The Board or any operating agency, on being directed by the Board may, in order to take into custody or under its control all property, effects and actionable claims to which a sick industrial company is or appears to be entitled, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any property, books of account or any other documents of such sick industrial company be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate, or the District Magistrate, as the case may be, shall, on such request being made to him,—
  - (i) take possession of such property, books of account or other documents; and
  - (ii) cause the same to be entrusted to the Board or the operating agency.
- (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.
- (3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

Protection of action taken in good faith. 30. No suit or other legal proceeding sha'l lie against the Board or the Appellate Authority or the Chairman or any other Member, officer or other employee of the Board or the Appellate Authority, or operating agency or any other person authorised by the Board or the Appellate Authority to discharge any function under this Act for any loss or damage caused or likely to be caused by any action which is in good faith done or intended to be done in pursuance of this Act or any other law or provision having the force of 'aw.

Saving of pending proceedings. 31. Where a receiver or an official liquidator has been appointed in any proceeding pending immediately before the commencement of this Act, in any High Court for winding up of an industrial company such proceeding shall not abate but continue in that High Court.

Fffect of the Act on other laws. 32. (1) The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976 for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act.

46 of 1973. 33 of 1976. 43 of 1961

- (2) Where there has been under any scheme under this Act an amalganation of a sick industrial company with another company, the provisions of section 72A of the Income-tax Act, 1961, shall, subject to the modifications that the power of the Central Government under that section may be exercised by the Board without any recommendation by the specified authority referred to in that section, apply in relation to such amalgamation as they apply in relation to the amalgamation of a company owning an idustrial undertaking with another company.
- 33. (1) Whoever violates the provisions of this Act or any sanctioned scheme, or any order of the Board, or the Appellate Authority and whoever makes a false statement or gives false evidence to the Board or the Appellate Authority, shall be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to fine.

Penalty for certain offences.

- (2) No court shall take cognizance of any offence under sub-section
  (1) except on a complaint in writing of the Secretary or any such other
  . officer of the Board or any such officer of an operating agency as may be authorised in this behalf by the Board.
  - 34. (1) Where any offence, punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.
- 35. If any difficulty arises in giving effect to the provisions of this Act or the rules, schemes or orders made thereunder, the Central Government may, by notification, remove the difficulty:

Power to remove difficulties.

Provided that no such notification shall be made by the Central Government after the expiry of a period of three years from the date on which this Act receives the assent of the President.

Power to make rules.

- 36. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the fore-going power, such rules may provide for all or any of the following matters, namely:—
  - (a) the salaries and allowances payable to and other terms and conditions of service of the Chairman and other Members under subsection (7) of section 6;
  - (b) the powers which may be exercised and the duties which may be performed by the Secretary to the Board or the Appellate Authority under sub-section (1) of section 8;
  - (c) the restrictions and conditions subject to which officers and employees may be appointed to the Board or the Appellate Authority under sub-section (2) of section 8;
  - (d) the salaries and allowances and other conditions of service of the Secretary and other officers and employees of the Board or the Appellate Authority under sub-section (3) of section 8;
  - (e) the additional matters referred to in sub-section (3) of section 13;
  - (f) any other matters which is required to be, or may be, prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

# THE SCHEDULE

[See sections 6(8) and 8(3)]

# DECLARATION OF FIDELITY AND SECRECY

I, ..................., do hereby declare that I will faithfully, truly and to the best of my skill and ability, execute and perform the duties required of me as the Chairman/Member Secretary/other officer or employee of the Board for the Industrial and Financial Reconstruction/the Authority for Industrial and Financial Reconstruction and which properly relate to the office or position held by me in or in relation to the said Board/Appellate Authority.

I further declare that I will not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Board/Appellate Authority, nor will I allowany such person to inspect or have access to any books or documents belonging to or in possession of the Board/Appellate Authority or the business of any person having any dealing with the said Board/Appellate Authority

Signature.

Signed before me.

# STATEMENT OF OBJECTS AND REASONS

The ill effects of sickness in industrial companies such as loss of production, loss of employment, loss of revenue to the Central and State Governments and locking up of investible funds of banks and financial institutions are of serious concern to the Government and the Society at large. The concern of the Government is accentuated by the alarming increase in the incidence of sickness in industrial companies. It has been recognised that in order to fully utilise the productive industrial assets; afford maximum protection of employment and optimize the use of the funds of the banks and financial institutions, it would be imperative to revive and rehabilitate the potentially viable sick industrial companies as quickly as possible. It would also be equally imperative to salvage the productive assets and realise the amounts due to the banks and financial institutions, to the extent possible, from the non-viable sick industrial companies through liquidation of those companies.

2. It has been the experience that the existing institutional arrangements and procedures for revival and rehabilitation of potentially viable sick industrial companies are both inadequate and time-consuming. A multiplicity of laws and agencies makes the adoption of a co-ordinated approach for dealing with sick industrial companies difficult. A need has, therefore, been felt to enact in public interest a legislation to provide for timely detection of sickness in industrial companies and for expeditious determination by a body of experts of the preventive, ameliorative, remedial and other measures that would need to be adopted with respect to such companies and for enforcement of the measures considered appropriate with utmost practicable despatch.

#### 3. The salient features of the Bill are—

- (i) application of the legislation to the industries specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, with the initial exception of the scheduled industry relating to ships and other vessels drawn by power, which may however be brought within the ambit of the legislation in due course;
- (ii) identification of sickness in an industrial company, registered for not less than seven years, on the basis of the symptomatic indices of cash losses for two consecutive financial years and accumulated losses equalling or exceeding the net worth of the company as at the end of the second financial year;
- (iii) the onus of reporting sickness and impending sickness at the stage of erosion of fifty per cent. or more of the net worth of an industrial company is being laid on the Board of Directors of such company; where the Central Government or the Reserve Bank is satisfied that an industrial ompany has become sick, it may make a reference to the Board; likewise if any State Government, scheduled bank or public financial institution having an interest in an industrial company is satisfied that the industrial company has become sick, it may also make a reference to the Board;

- (iv) establishment of a Board consisting of experts in various relevant fields with powers to enquire into and determine the incidence of sickness in industrial companies and devise suitable remedial measures through appropriate schemes or other proposals and for proper implementation thereof;
- (v) constitution of an Appellate Authority consisting of persons who are or have been Supreme Court Judges, Senior High Court Judges and Secretaries to the Government of India, etc., for hearing appeals against the orders of the Board.
- 4. The notes on clauses appended to the Bill explain the various provisions of the Bill.

New Delhi; The 22nd August, 1985.

VISHWANATH PRATAP SINGH.

# PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 6(3)/85-I. F-ii, dated the 20th August, 1985 from Shri Vishwanath Pratap Singh, Minister of Finance to the Secretary-General, Lok Sabha].

The President, having been informed of the subject matter of the proposed Bill, recommends under clause (1) of article 117 read with clause (1) of article 274 of the Constitution, the introduction of the Sick Industrial Companies (Special Provisions) Bill, 1985 in Lok Sabha and also recommends to Lok Sabha under clause (3) of article 117 of the Constitution, the consideration of the Bill.

#### Notes on clauses.

Clause 1 deals with the short title, extent, commencement and application of the legislation. The enactment would, in the first instance, apply to all industries included in the First Schedu'e to the Industries (Development and Regulation) Act, 1951, except the industry relating to ships and other vessels drawn by power which, may, however, be subsequently brought under the purview of the enactment by a notification issued by the Central Government in consultation with the Reserve Bank of India.

Clause 2 carries a declaration that the legislation is being enacted for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39 of the Constitution.

Clause 3 contains definitions of the terms used in the legislation. Special mention may be made about the definition of the term "industrial company" which means a company owning one or more industrial undertakings; and the term "sick industrial company" which means an industrial company registered as company for not less than seven years and has suffered cash losses for two consecutive financial years and at the end of the second of such financial years has accumulated losses equal or exceeding its net worth.

Clause 4 provides for the establishment of a Board consisting of a Chairman and not less than two and not more than fourteen other Members being experts in various relevant fields to be appointed by the Central Government.

Clause 5 provides for the constitution of an Appellate Authority consisting of a Chairman and three other Members being persons who are or have been Judges of the Supreme Court, Senior Judges of High Courts and the Secretaries to the Government of India, etc., to be appointed by the Central Government.

Clause 6 contains provisions relating to the conditions on which the Central Government should be satisfied before appointing a person as a Member of the Board or the Appellate Authority; the tenure of the Members; resignation or removal of a Member; the mode of filling up of a vacancy and the fixation of salaries and allowances and prescription of other terms and conditions of service of the Members, etc.

Clause 7 deals with contingencies in which the Central Government may remove a Member from the Board or the Appellate Authority and the contingencies in which the Central Government may remove such Members only with the consent of the Supreme Court.

Clause 8 provides for appointment by the Central Government of a Secretary each to assist the Board and the Appellate Authority and appointment by the Board and the Appellate Authority of such other officers and employees as may be prescribed with such salaries and allowances and other conditions of service as may be prescribed.

Clause 9 provides for the salaries and allowances of the Members and the salaries, allowances, and pension of the Officers and employees of the Board and Appellate Authority to be defrayed out of the Consolidated Fund of India.

Clause 10 affords protection for acts or proceedings of the Board or the Appellate Authority from being questioned merely on account of any vacancy or defect in constitution of the Board or Appellate Authority.

Clause 11 specifies that the Members, officers and other employees of the Board and the Appellate Authority shall be deemed to be public servants.

Clause 12 provides for the Benches of the Board and Appellate Authority.

Clause 13 empowers the Board and the Appellate Authority to regulate their own procedure and conduct of Business.

Clause 14 lays down that the Board or the Appellate Authority shall be deemed to be a civil court for the purposes of certain provisions of the Code of Criminal Procedure, 1973 and the Indian Penal Code.

Clause 15 lays down that a sick industrial company should make a reference to the Board within sixty days from the date of finalisation of duly audited accounts or even before such finalisation if there are sufficient reasons to form the opinion that the company has become sick. Where the Central Government or the Reserve Bank is satisfied that an industrial company has been sick, it may make a reference to the Board; likewise if any State Government, scheduled bank or public financial institution having an interest in an industrial company is satisfied that the industrial company has become sick, it may make a reference to the Board.

Clause 16 enables the Board on receipt of a reference under clause 15 or otherwise to make or cause to be made an inquiry for the purpose of determining whether the industrial company has become sick industrial company.

Clause 17 empowers the Board to allow time to a sick industrial company to make its net worth positive within a specified period. If the Board decides that it is not practicable for the sick industrial company to make its net worth positive within a reasonable time, it may direct any public financial institution, designated as the operating agency, to prepare a scheme, for rehabilitation of the company.

Clause 18 provides for the operating agency, on being directed by the Board to prepare a scheme for reconstruction, revival, rehabilitation, change in or take over of management, ama gamation, sale or lease of a part or the whole of any industrial undertaking of the sick industrial company or any other preventive, ameliorative or revival measures. It also provides for eliciting objections and suggestions from the concerned companies on the draft schemes and for making modifications, if any, and for sanctioning schemes.

Clause 19 provides that where any rehabilitation schemes involves provision of financial assistance or any other reliefs or concessions or sacrifies from the Central Government, a State Government, or bank or financial institution of State level institution of any other institution, authority or creditor, such scheme—shall be—referred to all concerned for consent.

Clause 20 provides that if the Board after making sufficient inquiry is of the opinion that it would be just—and equitable to wind up the sick industrial company, it would forward its opinion to the concerned High Court for winding up of the company—The Board may, however, sell the assets of the company and forward the sale proceeds to the High Court for distribution in accordance—with the provisions of the Companies Act, 1956.

Clause 21 enables the Board, through an operating agency, to prepare a complete inventory of all assets and habilities, etc.

Clause 22 provides for the suspension of legal proceedings, contracts, etc., with respect to certain sick industrial companies.

Clause 23 lays down that an industrial company in which the ac cumulated losses as at the end of any financial year have eroded fifty percent or more of the peak net worth during any of the proceeding five financial years, shall report the fact of such erosion to the Board, with in sixty ways from the date of finalisation of the audited accounts. Such industrial company would also be required to hold a general meeting of its shareholders for considering the erosion after forwarding a report of the causes of the erosion to every—shareholder atleast twenty-one days before the date of the meeting—Change of any director other than a director appointed by the Central Government or a public financial institution could be effected by an ordinary resolution passed at the meeting

Clause 24 provides for rect fication of misfeasance, malfeasance, etc., and report of such matters to the Central Government.

Clause 25 provides for a person aggrieved by an order made by the Board to appeal to the Appellate Authority.

Clause 26 bars the jurisdiction of civil courts, except as provided in the Act against any matter talling within the purview of the Board of the Appellate Authority

Clause 27 provides for delegation of certain powers of the Board

Clause 28 provides for the Central Government to call for returns from the board and for the Board to collect from or turnish to the Central Government, Reserve Bank, any bank, public financial institution or State level institution, any information.

Clause 29 provides for the Board or any operating agency to seek the assistance of the Chief M tropolitan Magistrate or the District Magistrate for taking possession of the property of a sick industrial company Clause 30 is the usual clause rel time to the protection of action taken in good faith.

Clause 31 lays down that if may receiver or official liquidator has been appointed in any winding up proceedings at the time of the commencement of the legislation the proceedings shall continue in the respective High Courts.

Clause 32 gives everriding effect to the provisions of the legislation over all other enactments except the Foreign Exchange Regulation Act 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. The powers of the Central Government under section 72A of the Income tax Act, 1961 to give tax benefit to the transferee industrial company in cases of amalgamation are conferred on the Board.

Clause 33 specifies the penalties for violation of the provisions of the legislation or sanctioned schemes or orders of the Board or Appellate Authority and for making or giving false statement or evidence before the Board or Appellate Authority.

Clause 34 provides that any offence committed by a company and punishable under the legislation would cover the persons in charge of company.

Clause 35 is an enabling provision to remove difficulties by the Central Government up to a period of three years.

Clause 36 confers on the Central Government the power to make rules for carrying out the provisions of the legislation.

# FINANCIAL MEMORANDUM

Clause 4 of the Bill provides for the establishment of the Boara for Industrial and Financial Reconstruction with a Chairman and not less than two and not more than fourteen other Members to be apointed by the Central Government. Clause 5 provides for the constitution of the Appellate Authority for Industrial and Financial Reconstluction consisting of a Chairman and not more than three other Members to be appointed by the Central Government Sub-clause (7) Plause 6 provides that the salaries and allowances payable to the Chairman and other Members of the Board and the Appellate Authority shall be such as may be prescribed. As a person who is or has been a Judge of the Supreme Court is eligible to be appointed as the Chairman of the Appellate Authority and a person who is or has been a Judge of a High Court or who is or has been an officer not below the rank of a Secretary to the Government of India, is eligible to be appointed as a Member of the Appellate Authority, the pay and allowances of Chairman and other Members of the Appellate Authority will require to be fixed commensurate with these eligibility criteria. It is expected that an expenditure of rupees eighty-four thousand would be incurred, annually, towards the salary and allowances of the Chairman of the Appellate Authority at the maximum level of pay or rupees seventyeight thousand, annually, at the minimum level of pay. An annual expenditure of rupees two lakhs and sixteen thousand is expected to be incurred towards the salary and allowances of the Members of the Appellate Authority at the maximum levels of pay or rupees one lakh and ninety-eight thousand at the minimum levels of pay. who are or have been qualified to be High Court Judges may be apamong others, to be the Chairman or any other Member of the Board, the salary and allowances of the Chairman and other Members of the Board would have to be commensurate with the salary and allowances of the High Court Judges. Keeping in view these considerations, it is expected that in the event of the Board consisting of one Chairman and fourteen other Members, an annual expenditure of rupees nine lakhs and ninety-six thousand would be incurred towards salary and allowances of the Chairman and the Members of the Board at the maximum levels of pay and rupees nine lakhs and six thousand at the minimum levels of pay. In the event of the Board consisting of the specified minimum number of one Chairman and two Members only, the annual expenditure towards salary and allowances of the Chairman and Members of the Board may be expected to be rupees one lakh and thirty-two thousand at the maximum levels of pay and rupees one lakh and twenty thousand at the minimum levels of pay,

2.1. Under clause 8, the Central Government shall appoint a Secretary each to assist the Board and the Appellate Authority and the Board and the Appellate Authority may appoint such other officers and employees as may be necessary. The salary and allowances payable to the Secretary, other Officers and employees of the Board or the Appellate Authority would be as prescribed. It is expected that on account

of the salary and allowances of the Secretaries, Officers and other employees of the Board and the Appellate Authority, an annual expenditure of rupees twenty-six lakhs and twenty-one thousand would be incurred at the maximum levels of pay and rupees fifteen lakhs and fifty thousand at the minimum levels of pay.

- 2.2 In terms of clause 8 of the Bill, the pension payable to the Officers and other employees of the Board and the Appellate Authority would need to be derrayed from the Consolidated Fund of India. The amount of pension payable would be dependent upon the number of Officers and the status of officers retiring each year. The amount payable as pension annually cannot be precisely quantified at this—stage although it may be estimated that on an everage the amount payable may not exceed rupees twenty thousand annually.
- 3. In terms of clause 9 of the Bill, the administrative expenses of the Board and the Appellate Authority would need to be defrayed from the Consolidated Fund of India. It is expected that the Board and the Appellate Authority would incur an expenditure of rupees fifty lakbs as establishment and other administrative expenditure in the first year of their establishment and would incur establishment and other administrative expenditure of rupees twenty-five lakbs, annually, in the subsequent years.
- 4. Under clause 19, the Central Government may be called upon to provide loans, advances, guarantees, reliefs, concessions or other sacrifices of financial nature to certain sick industrial companies to rehabilitate them. It is not possible at this stage to quantify the extent of the financial involvement that may devolve on the Central Government under this clause.
- 5. In terms of sub-clause (2) of clause 32 of the Bill in cases of amalgamation of a sick industrial company with a non-sick industrial company, the Board shall exercise the powers of the Central Government within the meaning of section 72A of the Income-tax Act, 1961 for giving the benefits of the carry forward of accumulated loss and unabsorbed depreciation of the sick industrial company to the non-sick transferee industrial company. Exercise of these powers by the Board would have the effect of foregoing income-tax. The of Income tax benefit that may be allowed to the transferee industrial company would depend upon the number of schemes that may be approved and the extent of the accumulated loss and unabsorbed. depreciation of the sick industrial company being amalgamated. the extent of income-tax to be foregon; under these provisions cannot be qualified at this stage

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 17 read with clause 18 empowers the Board for Industrial and Financial Reconstruction to cause schemes to be prepared for the reconstruction, revival or rehabilitation of the sick industrial companies; for the proper management of the sick industrial company by change in, or take over of, management of a sick industrial company; for the amalgamation of sick industrial company with any other company; for the sale or lease of a part or whole of the sick industrial company; for devising other preventive ameliorative and remedial measures, etc. If any difficulty arises in giving effect to the provisions of the scheme the Board may, by order, do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty Ivide sub clause (9) of clause 181. Clause 35 empowrs the Central Government to remove, by notification, any difficulty which may arise in giving effect to the provisions of the Act, with a safeguard that no such notification may be issued after the expiry of a period of three years from the date of the assent of the President-

- 2. Clause 36 empowers the Central Government to make rules for the salaries and allowances payable to, and other terms and conditions of service of, the Chairman and other members of the Board and Appelllate Authority; the conditions and restrictions subject to which officers and employees may be appointed to the Board or the Appellate Authority and also their salaries and allowances and other conditions of service and the powers which may be exercised and the duties which may be performed by the Secretaries of the Board or the Appellate Authority, etc.
- 3. The matter with respect to which the schemes or rules may be made are matters of administrative or procedural detail and are matters for which it is not practicable to make provisions in the Bill. The matters in respect of which orders may be made under clause 35 of the Bill are matters which cannot be visualised at this stage. The delegation of legislative power is, therefore, of a normal character.

# BILL No. 164 OF 1985

A Bill to provide for the safety, health and welfare of dock workers and for matters connected therewith

Be it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Dock Workers (Safety, Health and Welfare) Act, 1985

Short title, extent, commencement and application.

- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint.
  - (4) It shall not apply to any ship of war of any nationality.
  - 2. In this Act, unless the context otherwise requires—

Definitions

- (a) "appropriate Government" means, in relation any major port, the Central Government. and, in relation to any other port, the State Government;
- (b) "cargo" includes anything carried or to be carried in a ship or other vessel;
- (c) "Chief Inspector" means the Chief Inspector of Dock Safety, appointed under sub-section (1) of section 3;
- (d) "dock work" means any work in or within the vicinity of any port in connection with, or required for, or incidental to, the loading unloading, movement or storage of cargoes into or from ship or other vessel; port. dock storage place or landing place, and includes—
  - (i) work in connection with the preparation of ships or other vessels for receipt or discharge of cargoes or leaving port; and

- (ii) chipping, painting or cleaning of any hold, tank, structure or lifting machinery or any other storage area in board the ship or in the docks.
- (e) "dock worker' means a person employed or to be employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, on dock work;
- (f) "employer", in relation to a dock worker, means the person by whom he is employed or is to be employed on dock work, whether for remuneration or not,
- (g) "principal employer", in relation to a dock worker employed or to be employed by or through any agency (including a contractor), means the person in connection with whose work he is employed or is to be employed by such agency;
  - (h) "regulation" means a regulation made under this Act.

inventory,

- 3. (1) The appropriate Government may by rotification in the Official Gazette, appoint such person as it thinks fit to the Chief Inspector of Dock Safety and such persons as it thinks fit to be Inspectors subordinate to the Chief Inspector for the purposes of this Act at such ports as may be specified in the notification.
  - (2) The Chief Inspector shall also exercise the powers of an Inspector.
- (3) The Chief Inspector and all Inspectors shall be deemed to be public servants within the meaning of the Indian Penal code.

45 of 1860.

# Powers of inspectors

- 4. An Inspector, may, at any port for which he is appointed,—
- (a) enter, with such assistance (if any), as he thinks fit. any ship, dock, warehouse or other premises. where any dock work is being carried on, or where he has reason to believe that any dock work is being carried on;
- (b) make examination of the ship, dock, lifting machinery, cargo gear, stagings, transport equipment, warehouses or other premises, used or to be used, for any dock work;
- (c) require the production of any register, muster roll or other document relating to the employment of dock workers and examine such document:
- (d) take on the spot or otherwise such evidence of any person which he may deem necessary:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself;

(e) take copies of registers, records or other documents or portions thereof as he may consider relevant in respect of any offence which he has reason to believe has been committed or for the purpose of any inquiry;

- (f) take photograph, sketch, sample, measure or record as he may consider necessary for the purpose of any examination or inquiry;
- (g) hold an inquiry into the causes of any accident which he has reason to believe was the result of the collapse or failure of lilting machinery, transport equipment, staging or non-compliance with any of the provisions of this Act or the regulations;
- (h) issue show cause notice relating to the safety, health and welfare provisions arising under this Act or the regulations;
- (i) prosecute, conduct or defend before any court any complaint or other proceedings arising under this Act or the regulations;
- (j) exercise such other powers as may be conferred upon him by the regulations.
- 5. (1) If it appears to an Inspector that any place at which any dockwork is being carried on is in such a condition that it is dangerous to hie, safety or health of dock workers, he may, in writing, serve on the owner or on the person in charge of such place an order prohibiting any dock work in such place until measures have been taken to remove the cause of the danger to his satisfaction.

Power of Inspector where employment of dock workers are dangerous.

- (2) An Inspector serving an order under sub-section (1) shall endorse a copy to the Chief Inspector who may modify or cancel the order without waiting for an appeal.
- 6. The owner or the person in charge of the place at which any dock work is being carried on, shall afford the Chief Inspector or the Inspector all reasonable facilities for making any entry, inspection, survey, measurement, examination or inquiry under this Act or the regulations.

Facilities
to be
afforded
to an
Inspector.

7. (1) All copies of, and extracts from, registers or other records in relation to any dock work and all other information required by the Chief Inspector or an Inspector or by anyone assisting him, in the course of the inspection or investigation carried out for the purposes of this Act or the regulations shall be regarded as confidential and shall not be disclosed to any person or authority unless such disclosure is for the purpose of any action or proceeding under this Act or the regulations or under any other law or unless the Chief Inspector or the Inspector considers such disclosure necessary to ensure the health, safety or welfare of any dock worker.

Restrictions on disclosure of information.

(2) The Chief Inspector or the Inspector shall not disclose the source of any complaint bringing to his notice a defect or breach of any legal provisions and if any visit or inspection is to be made in connection with such a complaint, he shall give no intimation to the employer that the visit is made in consequence of receipt of such a complaint:

Provided that the restrictions imposed under this sub-section shall not apply to any case where the complainant himself has expressed his willingness to have the source of complaint disclosed.

(3) If the Chief Inspector or an Inspector or any other person referred to in sub-section (1) discloses, contrary to the provisions of this section, any information as aforesaid, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Appeal.

8. Any person aggrieved by an order under section 5 may, within fifteen days from the date on which the order is communicated to him, prefer an appeal to the Chief Inspector or where such order is by the Chief Inspector, to such authority as may be specified by the regulations and the Chief Inspector or such authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible:

Provided that the Chief Inspector or such authority may entertain the appeal after the expiry of the said period of fifteen days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time:

Provided further that an order under section 5 shall be complied with, pending the decision of the Chief Inspector or such authority.

Advisory Committee,

- 9. (1) The appropriate Government may constitute an Advisory Committee to advise upon such matters arising out of the administration of this Act and the regulations as that Government may refer to it for advice.
- (2) The members of the Advisory Committee shall be appointed by the appropriate Government and shall be of such number and chosen in such manner as may be prescribed by rules made under this Act:

Provided that the Advisory Committee shall include an equal number of members representing—

- (i) the appropriate Government,
- (ii) the dock workers, and
- (iii) the employers of dock workers and shipping companies.
- (3) The Chairman of the Advisory Committee shall be one of the members appointed to represent the appropriate Government, nominated in this behalf by that Government.
- (4) The appropriate Government shall publish in the Official Gazette the names of all members of the Advisory Committee.
- (5) The term of office of the members of the Advisory Committee and the manner of filling vacancies among, and the procedure to be followed in the discharge of their functions by, the members shall be such as may be prescribed by rules made under this Act.

Power of appropriate Government to direct

10. (1) The appropriate Government may, if it considers it expedient to do so, appoint a competent person to inquire into the causes of any accident occurring in connection with any dock work or into any cases where a disease specified by regulations as a disease connected with dock work has been or is suspected to have been contracted by dock workers

and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

Inquiry mlo cases of accidents

5 of 1908.

(2) The person appointed to hold an inquiry under this section shall or di have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects and may also, so far as may be necessary for the purposes of the inquiry, exercise any of the powers of an Inspector under this Act; and every person required by the person making the inquiry to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code.

6 of 1860.

- (3) The person holding the inquiry under this section shall make a report to the appropriate Government stating the causes of the accident or, as the case may be disease and any attendant circumstances and adding any observations which he or any of the assessors may think fit to make.
- (4) The procedure to be followed at inquiries under this section shall be such as the appropriate Government may prescribe by rules under section 20.

# 11. (1) No dock worker shall--

Obligation of dock workers.

- (a) wilfully interfere with, or misuse, any appliance, convenience or other thing provided in connection with any dock work for the purpose of securing the health, safety and welfare of dock workers;
- (b) wilfully and without reasonable cause do anything likely to endanger himself or others; and
- (c) wilfully neglect to make use of any appliance, convenience or other thing provided in connection with any dock work for the purpose of securing the health, safety and welfare of dock workers.
- (2) If any dock worker contravenes any of the provisions of subsection (1), he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.
- 12. The appropriate Government may, by notification in the Official Power to Gazette, exempt from all or any of the provisions of this Act and of exempt. the regulations, on such conditions, if any, as it thinks fit-

- (a) any port or place, dock, wharf, quay or similar premises, if that Government is satisfied that dock work is only occasionally carried on or the traffic is small and confined to small ships and fishing vessels at such port, dock, wharf, quay or similar premises; or
- (b) any specified ship or class of ships, if that Government is satisfied, having regard to the features of such ship or ships, the nature, quantum and periodicity of dock work carried thereon and all other relevant factors, that it is necessary so to do:

Provided that the appropriate Government shall not grant exemption under this section unless it is satisfied that such exemption will not adversely affect the health, safety and welfare of dock workers.

Protection of action taken in good taith.

ties.

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

# 14. (1) Whoever,—

- (a) wilfully obstructs an Inspector in exercise of any power conferred by or under this Act or fails to produce on demand by an Inspector any register or other documents kept in pursuance of the regulations or otherwise in connection with any dock work or conceals or prevents or attempts to prevent any person from appearing before, or being examined by, an Inspector; or
- (b) unless duly authorised or in case of necessity, removes any fencing, gangway, gear, ladder, life-saving means or appliance, light, mark, stage or other thing required to be provided by, or under, the regulations; or
- (c) having in case of necessity removed any such fencing, gangway, gear, ladder, life-saving means or appliance, light, mark, stage or other thing, omits to restore it at the end of the period for which its removal was necessary,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

- (2) If any person, being a person whose duty is to comply with any of the regulations, contravenes such regulations and such contravention results—
  - (a) in any fatal accident to a dock worker, or
  - (b) an accident which incapacitates a dock worker from earning his full wages for more than a fortnight,

such person shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than two thousand rupees in a case falling under clause (a) and five hundred rupees in a case falling under clause (b) but which may extend, in either case, to five thousand rupees, or with both, and the court may order the whole or part of the fine to be paid to the dependent of the deceased dock worker, or, as the case may be, to the injured dock worker.

Explanation.—The provisions of this sub-section shall be in addition to any provisions which may be made under sub-section (4) of section 21.

(3) Subject to the provisions of section 11, if any dock worker contravenes any provision of this Act or the regulations imposing any duty or Hability on dock workers, he shall be punishable with impresement

for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

- (4) If any person who has been convicted for an offence punishable under any of the provisions of this Act or the regulations is again convicted for an offence committed within two years of the previous conviction and involving a contravention of the same provision, he shall be punishable for each subsequent conviction with double the imprisonment to which he would have been liable for the first contravention of such provision.
- 15. If the person committing an offence made punishable by this Act or the regulations or any abetment thereof is a firm or other association of individuals or a company or a local authority, all or any of the partners or members or directors thereof as well as the firm, association of individuals, company or local authority shall be deemed to be guilty of the offence or abetment and shall be liable to be proceeded against and punished accordingly:

Determination of the persons responsible for the offence in certain cases.

Provided that where a firm, association or company has given notices in writing to the Chief Inspector and the Inspector of the port where any dock work is being carried that it has nominated,—

- (a) in the case of a firm, any of its partners;
- (b) in the case of an association, any of its members;
- (c) in the case of a company, any of its directors,

who is resident, in each case in any place to which this Act extends and who is in each case either in fact in charge of the management of or holds the largest number of shares in such firm, association or company, to assume the responsibility of the person in charge of any dock work for the purposes of this Act, such partner, member or director, as the case may be, shall, so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid, be deemed to be the person in charge of such dock work for the purposes of this Act unless a notice in writing cancelling his nomination or stating that he has ceased to be a partner, member or director, as the case may be, is received by the Chief Inspector.

16. (1) Where a person is convicted of an offence punishable under this Act, the court may, in addition to awarding him any punishment, by order in writing, require him within a period specified in the order (which may be extended by the court from time to time on application made in this behalf) to take such measures as may be so specified for remedying the matters in respect of which offence was committed.

Power of court to make orders.

(2) Where an order is made under sub-section (1), the person shall not be liable under this Act in respect of the continuance of the offence during the period, or extended period, if any, but if on the expiry of such period or extended period the order of the court has not been fully complied with, the person shall be deemed to have committed a further offence and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with, or with both.

Provision relating to jurisdiction.

- 17. (1) No court inferior to that of a metropolitan magistrate or a magistrate of the first class shall try any offence under this Act or the regulations.
- (2) No prosecution for any offence under this Act or the regulations shall be instituted except by or with the previous sanction of an Inspector.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court shall take cognizance of an offence under this Act or the regulations unless complaint thereof has been made—

2 of 1974.

- (a) in the case of an offence punishable with fine,—
  - (i) within six months from the date of the offence; or
- (ii) where the commission of the offence was not known to the Inspector, within six months from the first day on which the offence comes to the knowledge of the Inspector; or
- (iii) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the Inspector; or
- (b) in the case of an offence punishable with imprisonment,-
  - (i) within one year from the date of the offence; or
- (ii) where the commission of the offence was not known to the Inspector, within one year from the first day on which the offence comes to the knowledge of the Inspector; or
- (iii) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the Inspector.

Explanation.—For the purposes of this section, in the case of a continuing offence a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.

Provision regarding fine.

18. Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for a metropolitan magistrate or a magistrate of the first class to pass a sentence of fine exceeding five thousand rupees authorised by this Act or the regulations on any person convicted of any offence thereunder.

2 of 1974.

Protection to persons acting under this Act. Power to make rules.

- 19. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.
- 20. The appropriate Government may, by notification in the Official Gazette, make rules consistent with this Act for all or any of the following purposes, namely:—
  - (a) the manner in which an Inspector is to exercise the powers conferred upon him under this Act;
  - (b) the inspection of premises of ships where any dock work is carried on;

(c) the manner of services of orders made under this Act;

- (d) the term of office and other conditions of service of members of the Advisory Committee, the manner of filling vacancies among, and the procedure to be followed in, the discharge of their functions under sub-section (5) of section 9;
  - (e) the procedure at inquiries under section 10; and
- (f) any other matter which is to be provided for by rules under this Act.
- 21. (1) The appropriate Government may, by notification in the Official Gazette, make regulations consistent with this Act for providing for the safety, health and welfare of dock workers.

Power to make Regulations.

- (2) Such regulations may provide for all or any of the following purposes, namely:—
  - .(a) providing for the general requirement relating to the construction, equipping and maintenance for the safety of working places on shore, ship, dock, structure and other places at which any dock work is carried on:
  - (b) providing for the safety of any regular approaches over a dock, wharf, quay or other places which dock workers have to use for going for work and for fencing of such places and projects;
  - (c) providing for the efficient lighting of all areas of dock, ship, any other vessel, dock structure or working places where any dock work is carried on and of all approaches to such places to which dock workers are required to go in the course of their employment;
  - (d) providing and maintaining adequate ventilation and suitable temperature in every building or an enclosure on ship where dock workers are employed;
    - (e) providing for fire and explosion prevention and protection;
  - (f) providing for safe means of access to ships, holds, stagings, equipment, lifting appliances and other working places;
  - (g) providing for the safety of workers engaged in the opening and closing of hatches, protection of ways and other openings in the docks which may be dangerous to them;
  - (h) providing for the safety of workers on docks from the risk of falling overboard being struck by cargo during loading or unloading operations;
  - (i) providing for the construction, maintenance and use of lifting and other cargo handling appliances and services, such as, pallets containing or supporting loads and provision of safety appliances on them, if necessary;
  - (j) providing for the safety of workers employed in freight container terminals or other terminals for handling unitised cargo;
  - (k) providing for the fencing of machinery, live electrical conductors, steam pipes and hazardous openings;

- (l) providing for the construction, maintenance and use of staging;
  - (m) providing for the rigging and use of ship's derricks;
- (n) providing for the testing, examination, inspection and certification as appropriate of loose gears including chains and ropes and of slings and other lifting devices used in dock work;
- (o) providing for the precautions to be taken to facilitate escape of workers when employed in a hold, bin, hopper or the like or between docks of a hold while handling coal or other bulk cargo;
- (p) providing for the measures to be taken in order to prevent dangerous methods of working in the stacking, unstacking, stowing and unstowing of cargo or handling in connection therewith;
- (q) providing for the handling of dangerous substances and working in dangerous or harmful environments and the precautions to be taken in connection with such handling;
- (r) providing for the work in connection with cleaning, chipping, painting operations and precautions to be taken in connection with such work;
- (s) providing for the employment of persons for handling cargo handling appliances, power operated hatch covers or other power operated ship's equipment, such as, door in the hull of a ship, ramp, retraceable car dock or similar equipment or to give signals to the drivers of such machinery;
  - (t) providing for the transport of dock workers;
- (u) providing for the precautions to be taken to protect dock workers against harmful effects of excessive noise, vibrations and air pollution at the work place;
  - (v) providing for protective equipment or protective clothing;
  - (w) providing for the sanitary, washing and welfare facilities;
  - (x) providing for-
    - (i) the medical supervision;
  - (ii) the ambulance rooms, first aid and rescue facilities and arrangements for the removal of dock workers to the nearest place of treatment;
    - (iii) the safety and health organisation; and
  - (iv) the training of dock workers and for the obligations and rights of the dock workers for their safety and health at the work place;
- (y) providing for the investigation of occupational accidents, dangerous occurrences and diseases, specifying such diseases, and the forms of notices, the persons and authorifies to whom they are to be furnished, the particulars to be contained in them and the time within which they are to be submitted; and
- (z) providing for the submission of statement of accidents, man-days lost, volume of cargo handled and particulars of dock workers.

- (3) The regulations made under this section may,—
- (a) provide for the circumstances in which and the conditions subject to which, exemptions from any of the regulations made under this section may be given specifying the authorities who may grant such exemption and regulating their procedure; and
- (b) make special provision to meet the special requirement of any particular port or ports.
- (4) In making a regulation under this section, the appropriate Government may direct that a breach thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and, if the breach is continued after conviction, with a further fine which may extend to one hundred rupees for each day on which the breach is so continued.
- 22. (1) The power to make rules and regulations conferred by sections 20 and 21 is subject to the condition of the rules and regulations being made after previous publications.

General provision relating to rules and regulations.

10 of 1897.

- (2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897 as that after which a draft of rules or regulations proposed to be made will be taken under consideration, shall not be less than forty-five days from the date on which the draft of the proposed rules or regulations is published for general information.
- (3) Every rule and every regulation made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation, as the case may be.
- (4) Every rule and every regulation made under this Act by a State Government shall be laid, as soon as may be after it is made, before the State Legislature.
- 23. In the Dock Workers (Regulation of Employment) Act, 1948, in section 3, in sub-section (2),-

Amendment of Act 9 of 1948.

- (a) in clause (g), the words "and welfare" shall be omitted;
- (b) clause (h) shall be omitted.

19 of 1934.

24. The Indian Dock Labourers Act, 1934 is hereby repealed.

Repeal.

Savings.

**25**. The Indian Dock Labourers Regulations, 1948 made under section 5 of the Indian Dock Labourers Act, 1934 so repealed and the Dock Workers (Safety, Health and Welfare) Scheme, 1961 made under section 4 of the Dock Workers (Regulation of Employment) Act, 1948 shall be

9 of 1948.

19 of 1934.

deemed to be regulations framed under this Act and shall be in force unless they are altered or repealed under this Act.

### STATEMENT OF OBJECTS AND REASONS

The Indian Dock Labourers Act, 1934 (19 of 1934), the Dock Workers, (Regulation of Employment) Act, 1948 (9 of 1948) and the Dock Workers (Safety, Health and Welfare) Scheme, 1961, framed under the later Act, inter alia, deal with the matters relating to the protection against accident of workers employed in loading and unloading ships, employment of dock workers and safety, health and welfare of dock workers. Thus, the law relating to the said matters is, at present, contained in more than one Act.

- 2. In view of the experience gained by the working of these Acts and the said Scheme, it is felt that with a view to serving the interests of the dock workers more effectively, the law relating to safety, health and welfare of the said workers, as far as practicable, be contained in a single Act. Accordingly, the proposed Bill provides for the safety, health and welfare of dock workers and for matters connected therewith.
  - 3. The Bill, among other things, seeks, inter alia, to-
  - (a) provide for the safety, health and welfare of dock workers in respect of all ports and all ships;
  - (b) enlarge the definitions of "dock work" and "dock workers" so as to widen the scope of protection;
  - (c) specify that the appropriate Government shall be, in relation to any major port, the Central Government, and, in relation to any other port, the State Government concerned;
  - (d) provide for the appointment of Chief Inspectors and Inspectors of Dock Safety with appropriate powers for enforcing the provisions of the proposed legislation;
  - (e) provide for the constitution of advisory committees to advise upon matters arising out of the administration of the proposed legislation;
  - (f) empower the appropriate Government to direct inquiry into cases of accidents and diseases;
  - (g) lay down obligations of the dock workers in following certain safety practices;
  - (h) empower the appropriate Government to exempt any port or ship from the provisions of the proposed legislation subject to such conditions as it thinks fit;
  - (i) provide for appropriate punishment for offences against the proposed legislation and also to provide for enhanced punishments in the case of second and subsequent conviction and further to provide for certain minimum punishment in certain cases;
  - (j) provide for the repeal of the Indian Dock Labourers Act, 1934 (19 of 1934) and to make necessary consequential amendments in the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).
  - 4. The Bill seeks to achieve the above objects.

NEW DELHI;

T. ANJAIAH.

#### FINANCIAL MEMORANDUM

Clause 3 of the Dock Workers (Safety, Health and Welfare) Bill, 1985, provides for the appointment of Chief Inspectors and Inspectors of Dock Safety, by the appropriate Government, for purposes of enforcement of the provisions of the proposed legislation. The Central Government shall be the appropriate Government in respect of dock work carried on in the major ports.

- 2. At present, the aspects regarding safety, health and welfare of dock workers engaged in dock work, in so far as the major ports at Bombay, Calcutta, Madras, Cochin, Kandla, Paradeep, Marmagoa, Vishakhapatnam, New Mangalore and New Tuticorin are concerned, are enforced through the Dock Safety Inspectors under the organisation of the Directorate General of Factory Advice Service and Labour Institutes, Bombay. The provisions of the proposed legislation are also to be enforced in the Central sphere by the same Dock Safety Inspectorates for which the current expenditure in a financial year from the Consolidated Fund of India is approximately Rs. 10 lakhs.
- 3. It would be necessary at a later stage to restructure and augment the Dock Safety Inspectorates in the Centre so as to make enforcement of the proposed law more effective and this would invlove additional expenditure in the future years to be incurred from the Consolidated Fund of India. It is not possible at this stage to compute the exact financial requirements on this account in future. The extension of the Act to minor ports would also involve additional expenditure which would be borne by the State Governments.
- 4. The Bill does not involve any other expenditure of a recurring or non-recurring nature.

# MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill empowers the appropriate Government to exempt any port or ship from all or any of the provisions of the proposed legislation on such conditions, if any, as it thinks fit. Circumstances in which such power can be exercised have been laid down in the said clause. It has also been provided in that c'ause that the appropriate Government shall not grant such exemption unless it is satisfied that such exemption will not adversely affect the health, safety and welfare of dock workers. This power is necessary to meet various circumstances and contingencies which cannot be visualised.

- 2. Clause 20 of the Bill empowers the appropriate Government to make rules in respect of matters falling within the purview of that clause. The matters in respect of which rules may be made, inter alia, relate to the manner in which an Inspector is to exercise the power conferred upon him, the inspection of premises or ships where any dock work is carried on, the terms of office and other conditions of service of members of the advisory committees and the procedure to be fo'lowed at an inquiry under clause 10 of the proposed legislation. The matters with respect to which rules may be made under this provision would relate to matters of procedure or detail.
- 3. Likewise, clause 21 of the Bill empowers the appropriate Government to make regulations for providing for the matters relating to the health, safety and welfare of dock workers. Sub-clause (2) of that clause also enumerates the specific matters in this behalf for which such regulations may be made. The matters with respect to which regulations may be made for the purposes of health, safety and welfare of the dock workers under this provision would relate to matters of procedure or detail.
- 4. In view of the reasons given above, the delegation of legislative power under the aforesaid provisions is normal in character.

#### BILL No. 167 of 1985

A Bill to provide for the establishment of an Authority for the management of aerodromes and civil enclaves whereat domestic air transport services are operated or are intended to be operated and of all communication stations and for matters connected therewith.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

# CHAPTER I

### PRELIMINARY

- 1. (1) This Act may be called the National Airports Authority Act, 1935.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
  - (3) It applies to—
  - (a) all aerodromes whereat domestic air transport services are operated or are intended to be operated, other than—
    - (i) aerodromes to which the International Airports Authority Act, 1971 applies; and

Short title, commencement and application.

43 of 1971.

- (ii) aerodromes and airfields belonging to, or subject to the control of, any armed force of the Union;
- (b) all civil enclaves; and
- (c) all aeronautical communication stations.

Definitions.

- 2. In this Act, unless the context otherwise requires,—
- (a) "air traffic service" includes flight information service, alerting service, air traffic advisory service, air traffic control service, area control service, approach control service and aerodrome control service;
- (b) "air transport service" means any service, for any kind of remuneration, whatsoever, for the transport by air of persons, mail or any other thing, animate or inanimate, whether such service relates to a single flight or series of flights;
- (c) "Authority" means the National Airports Authority constituted under section 3;
- (d) "civil enclave" means the area, if any, allotted at an aerodrome belonging to any armed force of the Union, for use by persons availing of any air transport services from such aerodrome or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on, such area.
- (e) "heliport" means an area, either at ground level or elevated on a structure, used or intended to be used for the landing and take off of helicopters and includes any area for parking helicopters and all buildings and structures thereon or appertaining thereto;
- (f) "member" means a member of the Authority and includes the Chairman, but does not include, for the purposes of sections 4, 5, 6 and 7, an ex officio member referred to in clause (b) of sub-section (3) of section 3;
  - (g) "prescribed" means prescribed by rules made under this Act;
  - (h) "regulations" means regulations made under this Act; and
- (i) words and expressions used herein and not defined but defined in the Aircraft Act, 1934, shall have, the meanings, respectively, assigned to them in that Act.

22 of 1934.

## CHAPTER II

# THE NATIONAL AIRPORTS AUTHORITY

- 3. (1) With effect from the commencement of this Act, the Central Government shall constitute an anthority to be called the National Airports Authority.
- (2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property both movable and immovable, and to contract and shall by the said name sue and be sued,
  - (3) The Authority shall consist of-
    - (a) a Chairman to be appointed by the Central Government;

tution
and incorporation
of the
Authority.

- (b) the Director-General of Civil Aviation, ex officio; and
- (c) not less than eight and not more than fourteen members to be appointed by the Central Government.
- (4) The Chairman shall be a whole-time member and other members referred to in clause (c) of sub-section (3) may be appointed as whole-time or part-time members as the Central Government may think fit.
- (5) The Chairman and the members referred to in clause (c) of subsection (3) shall be chosen from among persons who have special knowledge and experience in air transport or other transport services, industry, commercial or financial matters or administration and from among persons who are capable of representing organisations of workers and consumers.
- 4. A person shall be disqualified for being appointed as a member if he—
  - (a) has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the Central Government, involves moral turpitude; or
    - (b) is an undischarged insolvent; or
  - (c) is of unsound mind and stands so declared by a competent court; or
  - (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
  - (e) has in the opinion of the Central Government such financial or other interest in the Authority as is likely to affect prejudicially the discharge by him of his functions as a member.
- 5. (1) Subject to the provisions of section 6, every member (other than the *ex officio* member) shall hold office for a period of three years from the date on which he assumes office:

Provided that the Central Government may-

- (a) terminate the appointment of any whole-time member, who is not a servant of the Government, after giving him notice for a period of not less than three months or in lieu thereof, on payment of an amount equal to his salary and allowances, if any, for a period of three months;
- (b) terminate the appointment of any part-time member who is not a servant of the Government after giving him notice for such period as may be prescribed; and
- (c) terminate at any time the appointment of any member who is a servant of the Government.
- (2) The other conditions of service of the members shall be such as may be prescribed.
- (3) Any member may resign his office by giving notice in writing for such period as may be prescribed, to the Central Government and. on such resignation being notified in the Official Gazette by that Government, such member shall be deemed to have vacated his office.

Disqualification for office of member.

Term of office and conditions of service of members. (4) A casual vacancy caused by the resignation of a member under sub-section (3) or otherwise may be filled by fresh appointment and the person so appointed shall hold office for the remaining period for which the member in whose place he is appointed would have held office.

Vacation of office of member.

- 6. The Central Government shall remove a member if he-
- (a) becomes subject to any of the disqualifications mentioned in section 4:

Provided that no member shall be removed on the ground that he has become subject to the disqualification mentioned in clause (e) of that section, unless he has been given a reasonable opportunity of being heard in the matter; or

- (b) refuses to act or becomes incapable of acting; or
- (c) is, without obtaining leave of absence from the Authority, absent from three consecutive meetings of the Authority; or
- (d) in the opinion of the Central Government, has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

Eligibility
of member for
reappointment

7. Any person ceasing to be a member shall, unless disqualified under section 4, be eligible for reappointment as such.

Meetings.

- 8. (1) The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of the business at its meetings (including the quorum at such meetings) as may be provided by regulations.
- (2) The Chairman, or, if for any reason he is unable to attend any meeting of the Authority any other member chosen by the members present at the meeting shall preside at the meeting.
- (3) All questions which come up before any meeting of the Authority shall be decided by a majority of the votes of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have and exercise a second or casting vote.

Vacancies, etc., not to invalidate proceedings of the Authority.

- 9. No act or proceeding of the Authority shall be invalid merely by reason of—
  - (a) any vacancy in, or any defect in the constitution of, the Authority; or
  - (b) any defect in the appointment of a person acting as a member of the Authority; or
  - (c) any irregularity in the procedure of the Authority not affecting the merits of the case.